IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2629 OF 2006

The State of Maharashtra ...Petitioner

V/s.

Shri.Shriram Vishnu Vaidya ...Respondent

Mrs.M.M. Deshmukh, APP for the State.
Mr.Kuldeep Patil for Respondent.

CORAM : V.M. KANADE, J.
DATED : 9th OCTOBER, 2007.

P.C:-

1. Heard learned APP for the State/Petitioner and learned counsel for the Respondent.

2. State is challenging the order passed by the learned Chief Judicial Magistrate, Sangli in Regular Criminal Case No.240/1997 whereby the Trial Court was pleased to acquit the accused since witnesses were not examined by the prosecution.

3. Learned APP for the State submitted that prosecution was diligent in prosecuting the case and the learned Magistrate had not properly

exercised jurisdiction vested in him U/s.226 of Cr.P,.C. She relied on the judgment of Division Bench in the case of **State of Maharashtra V/s. Kishore Annaji Chawade reported in 1989(II) Prevention of Food Adulteration Cases 276** .

4. It is not possible to accept the submissions made by the learned APP for the State. The learned Magistrate has observed that more than seven years have passed and yet evidence before the charge was also not adduced by the prosecution and though matter was fixed for leading evidence before charge and number of opportunities were afforded to the prosecution to adduce evidence, complainant had failed to examine any witness in that case. Ratio of the judgment on which reliance is placed by the prosecution will not apply to the facts of the present case. In the said case, the Division Bench has observed that witness for whose presence, the matter was adjourned had, in fact, attended the Court at two earlier occasions, but this witness was not examined because Magistrate was otherwise busy. Ratio of the said judgment will not apply to the fats of the present case. This also has been noticed by the Magistrate that though

matter was fixed on number of dates for allowing the complainant to lead evidence before the charge, he had failed to examine any witness. Right of speedy trial is a fundamental right as envisaged under Article 21 of Constitution of India. In the present case, Roznama indicates that accused had been attending the Court more than six years till the date on which complaint was dismissed. There is no reason to interfere with the impugned order. Writ Petition is dismissed. Parties to act on authenticated copy.

. Writ Petition is disposed of accordingly.

V.M. KANADE, J.